REMARKS

This response is intended as a full and complete response to the non-final Office Action mailed on November 30, 2004. In the Office Action, the Examiner notes that claims 1-16 are pending and rejected. The Examiner's attention is directed to the Preliminary Amendment filed March 12,2002, which cancelled claim 1 and added new claims 2-18. Accordingly, the Applicants' respectfully requests that the Examiner confirm that claims 2-18 are now pending in this application. By this response, claim 15 has been amended and claims 1-14 and 16-18 continue unamended.

In view of both the amendments presented above and the following discussion, the Applicants submit that none of the claims pending in the application are anticipated, obvious or non-enabling under the respective provisions of 35 U.S.C. §§102, 103 and 112. Further, the Applicants have addressed the Examiner's Double Patenting Rejection of claims 2-18 and submit that there is no double patenting under the judicially created doctrine of obviousness-type double patenting. A terminal disclaimer will be filed for the claims which have been rejected under the judicially created doctrine of double patenting. Thus, the Applicants believe that all of the pending claims are in allowable form.

It is to be understood that the Applicants, by amending the claims, do not acquiesce to the Examiner's characterizations of the art of record or to the Applicants' subject matter recited in the pending claims. Further, the Applicants are not acquiescing to the Examiner's statements as to the applicability of the art of record to the pending claims by filing the instant responsive amendments.

OBJECTIONS

The Examiner has objected to the disclosure and requested that the Applicants provide the status of the co-pending application cited in the specification on page 1. The Applicants have amended the disclosure to provide the requested status, and therefore the Applicants respectfully request that the Examiner's objection is moot and should be withdrawn.

REJECTIONS

Obviousness Double Patenting

A. The Examiner has rejected claims 1-18 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-6 of U.S. Patent No. 6,282,207 in view of Tokura et al. (U.S. Patent 5,400,329, hereinafter "Tokura"). The Applicants respectfully traverse the rejection.

The Applicants will file a Terminal Disclaimer in compliance with 37 C.F.R. 1.130(b) upon the indication of allowable subject matter. As such, the Applicants respectfully request that the non-statutory obviousness-type double patenting rejection be held in abeyance.

B. The Examiner takes the position that claims 1-6 of U.S. Patent No. 6,282,207 and Tokura et al. (U.S. patent no. 5,400,329, hereinafter "Tokura") disclose the system/method disclosed by the Applicants. The Examiner contends that claims 1-6 of U.S. Patent 6,282,207 disclose all of the subject matter of the claimed invention with the exception of determining a quantity of packets and a constant bit rate in a communications network, and that it would have been obvious to a person of ordinary skill in the art at the time of the Applicants' invention to use the quantity of packets and the constant bit rate as taught by Tokura in the communications network of claims 1-6 of U.S. Patent No. 6,282,207. Applicants respectfully disagree.

The Applicants' submit that the double-patening/obviousness rejection in view of the combination of U.S. Patent 6,282,207 and Tokura is, on it face, improper, since U.S. Patent 6,282,207 does not have an earliest filing date prior to the date of the Applicants' invention. Specifically, commonly assigned U.S. Patent 6,282,207 is the parent application to this patent application, which expressly claims the benefit thereto. That is, the present patent application properly claims the benefit of the U.S. Patent 6,282,207 (i.e., Application No. 09/458,337, filed December 10, 1999). Accordingly, the effective filing date of the present application is the same as the filing date of commonly assigned U.S. Patent 6,282,207. Therefore, the U.S. Patent 6,282,207 cannot be properly used as a prior art reference against this present application.

Further, the Tokura reference fails to teach or suggest the inventive features as recited in independent claim 2 of Applicants' invention. Therefore, the Applicants respectfully request that the rejections be withdrawn.

35 U.S.C. §112

Claim 15

The Examiner has rejected claim 15 under 35 U.S.C. §112, ¶2, as being indefinite for failing to particularly point out and distinctly claim the subject matter which the Applicants regard as the invention. In particular, the Examiner states that in claim 15, line 2, "said disk drive array" has no antecedent basis. The Applicants respectfully traverse the Examiner's rejection.

The Applicants have amended dependent claim 15 to change "said disk drive array" to "a disk drive array". Accordingly, all of the elements of claim 15 now have proper antecedent basis. Therefore, the applicants respectfully request that the rejection be withdrawn.

CONCLUSION

Thus, the Applicants submit that none of the claims presently in the application are anticipated, obvious or non-enabling under the respective provisions of 35 U.S.C. §102, §103 and §112. The Applicants further submit that the Applicants have addressed the Examiner's obviousness-type double patenting rejection and it should be held in abeyance. Accordingly, both reconsideration of this application and its swift passage to issue are earnestly solicited.

If, however, the Examiner believes that there are any unresolved issues requiring adverse final action in any of the claims now pending in the application, it is requested that the Examiner telephone Eamon J. Wall at (732) 530-9404 so that appropriate arrangements can be made for resolving such issues as expeditiously as possible.

Respectfully submitted,

Dated: 2/28/05

E J Wall

Eamon J. Wall
Registration No. 39,414
Attorney for Applicant

MOSER, PATTERSON & SHERIDAN, LLP
595 Shrewsbury Avenue, Suite 100
Shrewsbury, New Jersey 07702
Telephone: 732-530-9404
Facsimile: 732-530-9808